

# HOUSE BILL REPORT

## HB 1137

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### As Reported by House Committee On: Business & Financial Services

**Title:** An act relating to defining independent contractor relationships in the context of real estate licensing.

**Brief Description:** Defining independent contractor relationships in the context of real estate licensing.

**Sponsors:** Representatives Kirby, Vick, Blake and J. Walsh.

#### **Brief History:**

##### **Committee Activity:**

Business & Financial Services: 1/18/17, 1/24/17 [DP].

#### **Brief Summary of Bill**

- Defines "independent contractor relationship" with respect to the relationship between real estate brokers and real estate firms.

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### HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

**Majority Report:** Do pass. Signed by 11 members: Representatives Kirby, Chair; Reeves, Vice Chair; Vick, Ranking Minority Member; J. Walsh, Assistant Ranking Minority Member; Barkis, Bergquist, Blake, Jenkin, McCabe, Santos and Stanford.

**Staff:** Peter Clodfelter (786-7127).

#### **Background:**

Real estate firms and brokers in Washington are regulated by the Washington Real Estate Commission and the Department of Licensing (DOL). The DOL issues licenses to qualified real estate firms, real estate brokers, managing brokers, and designated brokers, and has regulatory and disciplinary authority over real estate firms and all types of real estate brokers.

Real estate brokerage services include services such as listing, selling, purchasing, or leasing any real property interest, negotiating the sale or rental of real estate, or counseling or

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consulting buyers, sellers, landlords, or tenants in connection with a real estate transaction, when such services are offered or rendered to another, or on behalf of another for compensation or the expectation of compensation. Real estate brokerage services also include advertising or holding oneself out as engaged in real estate brokerage services.

A real estate firm is a sole proprietorship or business entity conducting real estate brokerage services in Washington and licensed by the DOL. Every real estate firm must have a designated broker. A designated broker is a natural person who owns a sole proprietorship real estate firm or who has the ability to control the operational or financial decisions of a real estate firm and who is designated by the business entity that is the real estate firm to act as a designated broker on behalf of the real estate firm. An endorsement to a managing broker's license is necessary to act as a designated broker.

A managing broker is a natural person acting on behalf of a real estate firm to perform real estate brokerage services under the supervision of a designated broker, and who may supervise other brokers or managing brokers licensed to the firm. A broker is a natural person acting on behalf of a real estate firm to perform real estate brokerage services under the supervision of a designated broker or managing broker. A managing broker or broker may be licensed to only one real estate firm at one time.

Real estate brokers, managing brokers, and designated brokers are exempt from state overtime compensation laws unless the broker provides real estate brokerage services under a written contract with a real estate firm that specifies the broker is an employee.

Under state unemployment insurance laws (the Employment Security Act), real estate brokers are excluded from the definition of "employment" to the extent that the broker is compensated by commission. Accordingly, real estate brokers are generally not eligible for unemployment benefits, and real estate firms need not make employer contributions or payments to the Unemployment Compensation Fund for real estate brokers.

The state's workers' compensation (industrial insurance) law generally applies to independent contractor relationships, in addition to employment relationships. Accordingly, real estate firms and real estate brokers must pay workers' compensation premiums, and real estate brokers with a work-related injury or occupational disease must seek relief under the workers' compensation (industrial insurance) law.

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### **Summary of Bill:**

A definition of "independent contractor relationship" is added to the regulatory scheme applicable to real estate firms, real estate brokers, managing brokers, and designated brokers.

"Independent contractor relationship" means a relationship between a broker or managing broker and a real estate firm that satisfies both of the following conditions:

- no written agreement with the broker or managing broker provides that the broker or managing broker is an employee of the firm; and

- substantially all of the broker or managing broker's compensation is for services related to real estate brokerage services provided by the firm.

It is specified that the new definition is not intended to relieve a managing broker or real estate firm of any supervisory duties in the regulatory scheme in chapter 18.85 RCW applicable to real estate firms, real estate brokers, managing brokers, and designated brokers.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The bill amends the real estate licensing law. In the real estate industry, real estate brokers (also called real estate agents) are considered independent contractors. This bill clarifies the existing independent contractor relationship between real estate brokers and real estate firms. The bill does not exempt any person who is currently subject to employment laws from those laws. The industry is covered by the Workers' Compensation Act and would remain so under the bill, and the industry has worked cooperatively with the Department of Labor & Industries over the years. Real estate brokers are also generally considered independent contractors for purposes of federal tax law. There is a legal common law test that courts use to determine whether a worker is an independent contractor or employee. Washington law imposes a duty on real estate firms and managing brokers to supervise brokers, and brokers may be licensed to only one firm at a time. Under the common law independent contractor test, those characteristics tend to point more towards an employment relationship, despite neither real estate firms nor brokers intending nor expecting the independent contractor relationship to be considered an employment relationship. This bill eliminates the potential for any ambiguity about the independent contractor status of real estate brokers and creates a definable expectation that when a real estate broker says they are an independent contractor, the law will recognize that fact.

(Opposed) None.

**Persons Testifying:** Bob Mitchell and Annette Fitzsimmons, Washington Association of Realtors.

**Persons Signed In To Testify But Not Testifying:** None.